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The Commonwealth of Massachusetts State Ethics Commission

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COMMISSION FACT SHEET NO. 2

LIQUOR LICENSES AND THE CONFLICT LAW

There has been a great deal of confusion concerning the propriety of municipal officials voting on liquor license matters when they, their family or the business they work for owns such a license. This fact sheet provides the basic "rules" local officials must follow to comply with the conflict law.

Section 19 of the conflict of interest law prohibits a municipal official from participating in any matter which affects his own or his immediate family's financial interest. (Immediate family is defined in the law as municipal employees, their spouses, and each of their parents, children, brothers and sisters.) Section 19 also prohibits local officials and employees from voting on matters affecting a business for which they work or serve as a partner, director, officer or trustee.

This means that municipal officials may not vote to issue or renew liquor licenses owned by any of the above -- even if licenses are simply renewed automatically on a yearly basis. It also makes no difference whether the license is up for renewal alone or if the license is one of out of fifty receiving renewals at the same time. The official must always abstain from voting on liquor licenses for himself, his immediate family or a business with which he's affiliated.

The larger issue involves whether municipal officials who hold liquor licenses (or whose family or place of business holds a license) can vote on any liquor license matter in their community. The prohibition in the conflict law extends to voting on matters affecting the financial interest of competitors. Therefore, municipal officials may not vote on any liquor license matter of a competitive establishment in town.

In some of the smaller communities, every liquor license holder may be in competition; in larger cities perhaps the "competitive zone" is much smaller. In an opinion issued in January, 1987, the Commission stated that a restaurant seeking a commercial liquor license was not in competition with a private club holding a restricted liquor license. In this opinion, the Commission allowed a selectman, who was the president of the corporation that operated the private club, to vote on the restaurant's application.

There is no one easy "rule" for local officials to rely upon when deciding who the competitors are for any liquor license holder. In a prior Commission advisory opinion, the Commission indicated that local authorities are often in a better position than the Commission to identify the local factors which would make a liquor license holder a competitor.

We suggest that appointed officials rely on their appointing authorities to make such a determination. In cases where elected officials are responsible for issuing liquor licenses (i.e., the Board of Selectmen) the board member who holds a liquor license should seek guidance from town or city counsel or from the Commission.

Finally, if there is a "stalemate" concerning the issuance or renewal of a liquor license, the Board member who has a financial interest in the license may not participate to break a tie vote. However, if a Board is unable to act because a majority of members are disqualified due to a conflict of interest, the "rule of necessity" may be invoked to allow the members' participation. There is a formal process that must be followed to invoke the rule of necessity. We urge municipal officials to contact us when faced with such a situation.

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Additional questions should be directed to the Legal Division of the State Ethics Commission at 727-0060.

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Commission fact sheets are prepared and issued by the Public Education Division of the State Ethics commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law.

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